SUPREME COURT, U. S.
JAN 17 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-881

SILAS LEONARD MORGAN, *Petitioner*

Against

THE STATE OF TEXAS, *Respondent*

PETITION FOR A WRIT OF CERTIORARI
To The Court Of Criminal Appeals
Of The State Of Texas

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Against

THE STATE OF TEXAS, *Respondent*

PETITION FOR A WRIT OF CERTIORARI
To The Court Of Criminal Appeals
Of The State Of Texas

The Petitioner, SILAS LEONARD MORGAN, prays that a writ of certiorari be issued to review the judgment of the Court of Criminal Appeals of the State of Texas of November 27, 1974.

OPINION BELOW

The opinion delivered by the Court of Criminal Appeals of the State of Texas pertaining to this Cause is reported as ____S.W.2d____ and is appended to this Petition as Appendix "A". This Petition is from the affirmance by the Court of Criminal Appeals of the State of Texas of the Petitioner's conviction in the trial court.

Petitioner was Indicted for the then felony offense of possession of a narcotic drug, to-wit: marijuana. See Art. 725b, V.A.T.P.C. Appendix "B". He was found guilty of the charged wrong and his punishment was assessed by a jury at ten (10) years confinement in the Texas Department of Corrections.

The then penalty for the offense of possession of marijuana was by confinement in the Texas Department of Corrections for not less than two (2) years nor more than life. See Art. 725b, Sec. 23, V.A.T.P.C. However, as of August 27, 1973, with the passage of the Texas Controlled Substances Act, the punishment now depends on the quantity of marijuana involved with a maximum permissible punishment of only ten (10) years confinement in the Texas Department of Corrections. See Appendix "C". The Petitioner's trial occurred prior to the effective date of the new act.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3) and Rule 19(1), Revised Rules of the Supreme Court of the United States of America.

QUESTION PRESENTED

Whether The Search Warrant Used In This Cause, Which Brought About The Search And Seizure Of Marijuana, For Which The Petitioner Was Charged, Tried And Convicted, Was Supported By An Affidavit Sufficient To Satisfy The Fourth Amendment To The Constitution Of The United States Of America And The Supreme Court's Decision Of Aguilar v. Texas? (See Appendix "D", which contains a copy of the affidavit and the search warrant.)

CONSTITUTIONAL PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES OF AMERICA, AMENDMENT IV:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

The Opinion of the Court of Criminal Appeals of Texas succinctly states the following to be the general pertinent facts of the case:

> "The record reflects that agents Murray and Lyle of the Department of Public Safety had the mobile home occupied by appellant in Montgomery County under surveillance during the early evening hours of March 5, 1971. Upon seeing appellant and others leave the mobile home, a radio message was dispatched to highway patrolmen to stop appellant's auto as well as the vehicles occupied by other persons who departed the premises with appellant. Appellant's vehicle was stopped, and appellant was given tickets for not having a valid operator's license and for not having a valid Texas registration. After the vehicle was stopped, narcotic agents arrived with a warrant to search appellant's mobile home. . ."

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Every search warrant, when used in a criminal prosecution against a person accused of a criminal wrong, must

be measured against the proscription and mandate of the Fourth Amendment to the Constitution of the United States of America. This Amendment prohibits unreasonable searches and seizures and states: "No warrant shall issue, except upon probable cause, supported by oath and affirmation."

The search warrant affidavit in reference to this cause provides: (See Appendix "D")

There should not be any question that this affidavit rests upon hearsay and an informant's report to police agents. When this occurs, of course, the decisions of *Aguilar v. Texas,* 1963, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723; and *Spinelli v. United States,* 1969, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637, come into play. In the State of Texas neither party to the cause may "go behind the affidavit" to test its validity. In the State of Texas, the affidavit to a search warrant stands on its own and may not be aided or attacked by evidence to the contrary. See *Polanco v. State,* 1971, 1972, Tex. Cr. App. 475 S.W.2d 763, 765.

In *Spinelli v. United States,* it was said:

> "If the affidavit rests upon hearsay—an informant's report—what is necessary under Aguilar is one of two things: the informant must declare either (1) that he has himself seen or perceived the fact or facts asserted; or (2) that his information is hearsay, but there is good reason for believing it—perhaps one of the usual grounds for crediting hearsay information."

Here, by the words and terms of the affidavit, it is a "hearsay" type affidavit; i.e., there is no personal knowl-

edge reflecting "nocuous conduct" stated on the part of the affiant.

The warrant issued at 7:30 O'Clock P.M. on March 4, 1971. It was not executed until the next evening at 9:15 O'Clock P.M., on March 5, 1971. The Petitioner was actually arrested after he had left the premises and was actually in another, adjacent County, while peacefully and lawfully driving his automobile. A search of his person and the automobile divulged no contents of an illegal nature nor any contraband of any illegal nature. However, after deviating from one Justice of the Peace Office, the arresting officers then returned with the Petitioner to the premises, where the alleged contraband made the basis of the charge and trial was found, where other officers were than executing the search warrant.

The information the "affiant" obtained from his "source" originally occurred on February 25, 1971. Cf. "Source also stated that on March 4, 1971, source observed a large quantity of Marihuana and other drugs at the above described mobile home."

As to the first issue of whether, under *Aguilar v. Texas*, supra, the first prong thereof, which requires information showing that matter which is lawfully subject to seizure is probably where it is alleged to be, was satisfied, by the recitations in the affidavit there is nothing to reflect that the "source" actually knew that what the "affiant" said the "source" saw was actually 'Marihuana". There is absolutely nothing to show that the "source" was qualified to express an opinion thereon; one way or the other. How did he know that, which he related to the affiant, the Petitioner "was selling *Marihuana*", "had a quantity of *Marihuana*", "saw a large quantity of *Marihuana*", and "observed a large quantity of *Marihuana*"? Nothing by

the affidavit in reference to this Cause. The mere assertion that contraband is being possessed is or should be insufficient to meet the first prong of *Aguilar*. Compare *Sibron v. New York*, 1968, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917. These are conclusionary and hearsay type allegations by the affiant from the "source".

There are no independent buttressing observations sufficient to satisfy the requirements of probable cause unless the placing of a "large brown plastic bag from [one's] home and place it in the trunk of [one's] automobile" is other than innocuous behavior.

Let us look at the second prong of *Aguilar*. What is there by this affidavit to show that the hearsay information given to the "affiant" by the "source" was credible or that the "source" was reliable? The only thing the affidavit reflects is: "Officers received information from a reliable source, whom affiant has received information from on four prior occasions and on each occasion the information has proven to be reliable." Is this sufficient to satisfy the second prong of *Aguilar?* It is respectfully submitted it should not be. What information? What kind of information? What did the information relate to? etc.

This is not a case where the warrant was drawn in the midst and haste of a criminal investigation without time for reflection thereon. Cf. *United States v. Ventresca*, 1965, 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed.2d 684. This warrant was not issued by a lay person nor was the affidavit acknowledged before some Notary Public. A *District Court Judge* took the affidavit and issued the warrant. This is the highest ranking judicial official in the State of Texas below the Appellate level in the State Court structure. The affidavit was issued on March 4, 1971. The warrant itself was not executed until March

5, 1971, at 9:15 O'Clock P.M. It was received at 7:20 O'Clock on March 4, 1971. If there was haste, about which nothing is shown from this record, it was the haste of a farm mule and not that of a human being. Thus, the Magistrate and District Court Judge was not given any underlying circumstances as to the reliability or the credibility of the informant. It is clear from *Aguilar's* second prong that underlying circumstances of both the informant's conclusions of guilt and the affiant's conclution that the "source" is reliable and credible must be put forth before the reviewing Magistrate. See *Spinelli v. United States,* supra. The mere conclusionary statement of the affiant that he had received "on four prior occasions and on each occasion the information has proven to be reliable" should never be sufficient. Allegations concerning "reliability" or "credibility" of unnamed informers or "sources" should directly allege sufficient facts and circumstances to show that the informer's or "source's" reputation for truth and veracity is good.

> Although the affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant, Jones v. United States, 362 U.S. 257, 80 S.Ct. 725, 4 L.Ed.2d 697, the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant whose identity need not be disclosed, see Rugendorf v. United States, 376 U.S. 528, 84 S.Ct. 825, 11 L.Ed.2d 887, was 'credible' or his information 'reliable!' " Aguilar v. Texas, 1963, 378 U.S. at 114-115, 84 S.Ct. at 1514, 12 L.Ed.2d at 729.

See also *Giordenello v. United States,* 1958, 357 U.S. 480, 78 S.Ct. 1245, 2 L.Ed.2d 1503; and *United States v.*

Harris, 1971, 403 U.S. 573, 91 S.Ct. 2075, 29 L.Ed.2d 723.

This Honorable Court, in *Aguilar v. Texas,* supra, condemned and held for naught the following regarding the "reliability" or "credibility" of the informant: "Affiants have received reliable information from a credible person . . ." It is submitted that the additional wording here, "whom affiant has received information from on four prior occasions and on each occasion the information has proven to be reliable," is totally insufficient to fill the void created by the omission of any facts or circumstances concerning the "reliability" or "credibility" of the "source." There was no attempt to support the claim that the "source" was "reliable" by any underlying circumstances. "The underlying circumstances of both the informer's conclusion of guilt and the officer's conclusion that the informer is reliable must be put forth before the reviewing magistrate." *Aguilar v. Texas,* supra.

Does the "corroboration", as stated in the affidavit, supply the gap? See *Spinelli v. United States,* supra. Or, did the Officers' surveillance divulge nothing more than "innocence seeming activity"? See *Spinelli v. United States,* supra. The surveillance was set up on February 25, 1971. Three (3) days passed without anything occurring. On the third day, what did the "surveillance" reveal? "On February 28, 1971 Officers observed Silas Leonard Morgan come to the above described mobile home at 11:10 A.M., driving a black over yellow Dodge Charger with Arkansas license number CCD 219." "Officers observed Morgan remove a large brown plastic bag from the mobile home and place [it] in the trunk of the black and yellow Dodge Charger, then leave and return to Houston, Texas." THAT IS ALL. Then, four (4) days pass. "Source also stated that on March 4, 1971, source observed a large quantity

of Marihuana and other drugs at the above described mobile home." The police agents then went and obtained a search warrant from a District Court Judge. Then, one (1) day passes before the same is executed.

It is respectfully submitted that "independent buttressing observations" means more than "merely being where the action *later* is." There were no secretive type movements on the part of the Petitioner when he went to the mobile home on February 28, 1971. If the removal of a plastic bag (there is nothing in the affidavit to reflect that anything of an illegal nature appeared to be therein) from a mobile home is nocuous, rather than innocuous, behavior, then a lot of housewives may be in trouble if some nosey neighbor desires to blow the whistle on such person. The distance from the location of the mobile home and Houston, Texas does not reveal anything. There were no known "dope" heads going in and out of the mobile home. It is respectfully submitted that the most that can be said of the "source" is that he "guessed" or the police agents "guessed" right. That part of the affidavit does not tend to verify the "source's" accusation and thereby support the conclusion that he was "reliable." "The unsupported assertion or belief of the officer does not satisfy the requirement of probable cause." *Spinelli v. United States,* supra, and compare the surveillance activities in *Spinelli* to those at bar.

The Petitioner, therefore, for the above and foregoing reasons, petitions this Honorable Court to grant this Application for Writ of Certiorari, and, after doing so, hold that the affidavit for the search warrant which issued in reference to this Cause was fatally defective either because of failure to satisfy the first prong of *Aguilar v. Texas,* supra, or the failure to satisfy the second prong of *Aguilar v. Texas* or the failure to satisfy both prongs of *Aguilar v. Texas.*

CONCLUSION

For all the reasons stated herein, Certiorari should be granted in this Cause. The ruling and Judgment of the Court of Criminal Appeals of the State of Texas, made and entered on November 27, 1974, should be reversed and this Cause should be remanded to the said Court of Criminal Appeals of Texas to enter an Order reversing its former Judgment and remanding this Cause for new trial to the Second Ninth District Court of Montgomery County, Texas.

Respectfully submitted,

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222-1728

CERTIFICATE OF PROOF OF SERVICE

I, MARVIN O. TEAGUE, Attorney for Petitioner, SILAS LEONARD MORGAN, hereby certify that a copy of the foregoing Petition for a Writ of Certiorari has been deposited in the United States Mail, postage prepaid, certified, and properly addressed to Respondent's Counsel, Honorable John L. Hill, Attorney General of the State of Texas, State Supreme Court Building, Austin, Texas, this the _____ day of January, A.D. 1975.

MARVIN O. TEAGUE

APPENDIX "A"

NO. 49,023

SILAS LEONARD MORGAN, Appellant

v.

THE STATE OF TEXAS, Appellee

Appeal from Montgomery County

OPINION

Appeal is taken from a conviction for possession of marihuana. The record reflects that the jury assessed punishment at ten (10) years on March 29, 1973, and sentence was pronounced on April 12, 1973.

At the outset, appellant contends that the affidavit underlying the search warrant was insufficient to reflect probable cause in that the two-prong test of *Aguilar* was not satisfied by the affidavit. Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964). The test set forth in *Aguilar* requires:

> "The magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed . . . was credible or his information reliable."

The affidavit in the instant case bears the date of March 4, 1971, and reads in pertinent part as follows:

> "Source [informant] stated that on February 25, 1971, Silas Leonard Morgan [appellant] had taken source to the above described mobile home where source saw a large quantity of marihuana. Source also stated that on March 4, 1971, source observed a large quantity of marihuana and other drugs at the above described mobile home."

This is more than a mere suspicion or conclusion on the part of the informer. The informer advised the affiant that he, the informer, had observed marihuana in appellant's mobile home the same day the affidavit was executed. We conclude that the magistrate was sufficiently informed of underlying circumstances from which the informer concluded that the marihuana was where he claimed it was. Smith v. State, 496 S.W.2d 90; Hegdal v. State, 488 S.W.2d 782; Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637.

Looking at the second requirement of *Aguilar*, the affidavit in the instant case recites:

> "Officers received information from a reliable source, whom affiant has received information from on four prior occasions and on each occasion the information has proven to be reliable."

In Heredia v. State, 468 S.W.2d 833 (rev'd. on other grounds), a recitation that information came "from a reliable and credible informer who has furnished truthful and reliable information in the past" was held sufficient to satisfy the second requirement of *Aguilar*. An almost identical recitation was held sufficient in Hegdal v. State, supra, where it was stated, "It is not necessary, as appellant contends, that the affidavit recite that the informer had given information in the past resulting in drug arrests

or narcotic seizures." See Gonzales v. Beto, 425 F.2d 963 (5th Cir. 1970). We find that the affidavit detailed sufficient information from which the magistrate concluded that the informer was credible or his information reliable. We reject appellant's contention that the affidavit underlying the search warrant was insufficient to reflect probable cause.

Appellant contends that the trial court was in error in overruling his motion to suppress on the ground that there was no probable cause to arrest appellant, and that the evidence found as a result of the arrest is inadmissible.

The record reflects that agents Murray and Lyle of the Department of Public Safety had the mobile home occupied by appellant in Montgomery County under surveillance during the early evening hours of March 5, 1971. Upon seeing appellant and others leave the mobile home, a radio message was dispatched to highway patrolmen to stop appellant's auto as well as the vehicles occupied by other persons who departed the premises with appellant. Appellant's vehicle was stopped, and appellant was given tickets for not having a valid operator's license and for not having a valid Texas registration. After the vehicle was stopped, narcotic agents arrived with a warrant to search appellant's mobile home. The search warrant contained an unconditional command to arrest appellant separate and distinct from the command to seize the contraband. See Arts. 18.10 and 18.11, V.A.C.C.P. (effective at the time of this trial); Pecina v. State, ____ S.W.2d____ (No. 48,665, 11-13-74); Garza v. State, 456 S.W.2d 374; Giacona v. State, 335 S.W.2d 837; Dawson v. State, 477 S.W.2d 277; Jones v. State, 496 S.W.2d 566. If it be urged that the search of appellant and his vehicle at the scene of the arrest came prior to the arrival of the

officers with the warrant and was not pursuant to such warrant, it is observed that no incriminating evidence was obtained as the result of this search.

Appellant contends the court erred in permitting testimony of an oral confession "because there is no evidence that the appellant had been properly warned of his constitutional rights."

After returning to the mobile home, Officer Leonard testified that appellant said, "Man, you've got me. I'll show you where it is." Appellant took Officers Leonard and Kelly to "a hole in the ground in back of the trailer [mobile home], approximately a hundred and seventy-five to two hundred feet from the trailer." In the hole officers found 94 packages, containing what was determined to be marihuana, weighing 95.6 pounds. Leonard stated that the whereabouts of this marihuana was unknown prior to appellant taking them to the location in question. Leonard testified that prior to the statement in question he had given appellant a warning of his rights by reading same from a card he carried. Leonard read the warning from "such a card," and we find same to be in compliance with the requirements of Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602. See Noble v. State, 478 S.W.2d 83. Appellant points to testimony of an officer who stated he did not hear appellant's rights read to him, and the testimony of appellant that he did not remember having his rights given him. Officer Kelly testified that he heard Leonard read appellant's rights to him. We conclude that the evidence supports the trial court's findings relative to appellant having been properly warned before he made the oral statement in question.

It appears that appellant is urging that the oral statement in question came as the result of an illegal arrest,

and that such oral confession was not voluntary. Assuming, arguendo, that the arrest was illegal, this Court has held on numerous occasions that a confession otherwise shown to have been voluntary is not rendered inadmissible by the fact that the accused was under arrest or in custody at that time, even though the arrest may have been under invalid process or without any process or legal right. Lacefield v. State, 412 S.W.2d 906; DeLeon v. State, 466 S.W.2d 573; Randolph v. State, 493 S.W.2d 869; Chase v. State, 508 S.W.2d 605.

Appellant testified that he was beaten by the officers. Officers denied that appellant had been physically abused or beaten. Justice of the Peace McMillan, before whom appellant was taken after the search, testified that appellant did not appear to be injured, and that appellant made no complaints about injuries. At the conclusion of the search, appellant was taken to Conroe and at his request was carried to a doctor. Doctor Jimmy Russell stated that he examined appellant on the night in question, and testified, "the most striking thing to me was he had an increased pulse rate. He was complaining of chest pain, which, of course, was not a physical finding, and there was, I believe, bruise over the right side of his chest."

Dr. Russell further testified that appellant had "severe heart disease," and that he could not tell how the bruise on appellant's chest was inflicted.

We conclude that the court had sufficient evidence to support its finding that the confession was voluntarily made. Further, we find no causal connection between the failure to take appellant before a magistrate (prior to the confession) and the oral confession, and reject appellant's argument in this respect. See Schultz v. State, 510 S.W.2d 940.

Appellant contends the court erred in failing to make findings regarding the admission of the oral confession, as required by Art. 38.22, V.A.C.C.P.

The record reflects that subsequent to appellant filing his brief in the trial court, and prior to transmittal of the record to this Court, the trial judge filed his written findings wherein he found the challenged confession was voluntarily made. This was held to be sufficient in Foreman v. State, 505 S.W.2d 564. No error is shown.

Lastly, appellant contends that the court erred in not granting his motion for instructed verdict in that the evidence was insufficient to support the conviction.

A search of the mobile home resulted in the seizure of a plastic vial in the bathroom containing marihuana, and a small bag of marihuana in the living room couch. Appellant, testifying in his own behalf, stated that "I bought it [mobile home] on a rental purchase." Appellant was seen leaving the mobile home a short time before the search which resulted in the seizure in question. Before appellant led officers to the large quantity of marihuana buried in the ground, he stated, "Man, you've got me. I'll show you where it is."

We conclude that the evidence affirmatively links the accused to the contraband, and find that the evidence is sufficient to support the conviction. See Haynes v. State, 475 S.W.2d 739; DeLeon v. State, 500 S.W.2d 862; Collins v. State, 502 S.W.2d 743.

The judgment is affirmed.

DAVIS, Commissioner

(Delivered November 27, 1974)

(Opinion approved by the Court)

CLERK'S OFFICE, COURT OF CRIMINAL APPEALS OF TEXAS

AUSTIN, TEXAS

I, GLENN HAYNES, Clerk of the Court of Criminal Appeals of Texas, do hereby certify that in Cause No. 49,023 styled:

Silas Leonard Morgan, Appellant,

vs.

State of Texas, Appellee,

judgment of the 2nd 9th Judicial District Court of Montgomery County, Texas, was affirmed on Nov. 27, 1974 and on Dec. 13, 1974 mandate issued.

THEREFORE, with the affirming of this judgment this cause was disposed of by this Court on Nov. 27, 1974, appellant having exhausted all remedies in this, The Court of Criminal Appeals of Texas and said judgment has now become final on the docket of this Court.

WITNESS my hand and Seal of said Court, at office, in Austin, Texas this the 2nd day of January A.D. 1975.

/s/ GEORGE R. MILLER, JR.
Deputy Clerk

GLENN HAYNES, CLERK
of the Court of Criminal Appeals
of Texas

NO. 49,023

IN THE COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

SILAS LEONARD MORGAN, Appellant
vs.
THE STATE OF TEXAS, Appellee

NOTICE OF APPEAL

COMES NOW SILAS LEONARD MORGAN, Appellant herein and hereby gives Notice of Appeal to the Supreme Court of the United States pursuant to 28 USC 1257 (3).

/s/ MARVIN O. TEAGUE
Marvin O. Teague
Counsel for Appellant
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412 Main Street
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222-1728

CERTIFICATE

I, the undersigned certify that a true copy of the original of this the above Notice of Appeal was forwarded to the Hon. Michael Rodak, Jr., Clerk of the Supreme Court of the United States, and to the Hon. Ellis A. Oualline, District Attorney for Montgomery County, Texas, and to the Hon. John L. Hill, Attorney General for the State of Texas, at their official addresses, this the 2nd day of January, A.D. 1975.

/s/ MARVIN O. TEAGUE
Marvin O. Teague

(Filed in Court of Criminal Appeals—January 2, 1975)

APPENDIX "B"

Art. 725b, V.A.T.P.C. Narcotic Drug Regulations

Section 1. The following words and phrases, as used in this Act, shall have the following meanings, unless the context otherwise requires:

. . .

(13) The term "Cannabis" as used in this Act shall include all parts of the plant Cannabis Sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the non-resinous oil obtained from such seed, nor the mature stalks of such plant, nor any product or manufacture of such stalks, except the resin extracted therefrom and any compound, manufacture, salt, derivative, mixture, or preparation of such resin. The term "Cannabis" shall include those varieties of Cannabis known as Marihuana, Hashish and Hasheesh.

(14) "Narcotic drugs" means coca leaves, opium, cannabis, amidone, isonipecaine and every substance neither chemically nor physically distinguishable from them; also opiates, which shall mean any drug having an addiction-forming or addiction-sustaining liability similar to opium or cocain; substances which are now listed in, or may be added subsequently to, Schedule II, Title II, Part B, Section 202, under the provisions of the Comprehensive Drug Abuse and Prevention and Control Act of 1970.

. . .

Section 2. (a) It shall be unlawful for any person to manufacture, possess, have, control, sell, prescribe,

administer, dispense, compound, offer to sell, or offer to buy any narcotic drug. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

Section 23. (a) Except as provided in Subsections (b) and (c) of this section, any person who violates any provision of this Act is guilty of a felony and upon a first conviction is punishable by imprisonment in the penitentiary for not less than two years nor more than life; and upon a second or subsequent conviction, he is punishable by imprisonment in the penitentiary for not less than 10 years nor more than life. Suspended sentence or probation under the Adult Probation and Parole Law is not available to a person upon a second or subsequent conviction.

. . .

APPENDIX "C"

Section 1.02, TEXAS CONTROLLED SUBSTANCES ACT.

For the purposes of this Act:

. . .

(17) "Marihuana" means the plant Cannabis sativa L., whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or its seeds. However, it does not include the resin extracted from any part of such plant or any compound, manufacture, salt, derivative, mixture, or preparation of the resin nor does it include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

Section 4.05. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses, a usable quantity of marihuana.

(b) An offense under Subsection (a) of this section is:

(1) a felony of the third degree if he possesses more than four ounces;

(2) a Class A misdemeanor if he possesses four ounces or less but more than two ounces;

(3) A Class B misdemeanor if he possessess two ounces or less.

(c) The possession of marihuana may not be considered a crime involving moral turpitude.

(d) Except as otherwise provided by this Act, a person commits an offense if he knowingly or intentionally delivers marihuana.

(e) Except as provided in Subsection (f) of this section, an offense under Subsection (d) of this section is a felony of the third degree.

(f) An offense under Subsection (d) is a Class B misdemeanor if the actor delivers one-fourth ounce or less without receiving remuneration.

Section 12.32, Vernon's Texas Penal Code, Third-Degree Felony Punishment

(a) An individual adjudged guilty of a felony of the third degree shall be punished by confinement in the Texas Department of Corrections for any term of not more than 10 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed $5,000. Amended by Acts 1973, 63rd Leg., p. 1125, ch. 426, art. 2, § 2, eff. Jan. 1, 1974.

APPENDIX "D"

COMPLAINT - Affidavit for arch Warrant for Narcotic Drugs

THE STATE OF TEXAS)
)
COUNTY OF Montgomery)

I, Charles Kelly, do solemnly swear that heretofore, on or about the 4th day of March, A.D. 1971, in the Montgomery County, Texas, one Silas Leonard Morgan did then and there unlawfully possess and does at this time unlawfully possess a narcotic drug and dangerous drug, to-wit: Marihuana

in mobile home residence being described as a white mobile home trimmed in green located 175 feet South of Farm Road 1314, 5 and 1/10 miles West of US Highway #59 in the Lakewood Colony Estates.

in Montgomery County, Texas, which said mobile home residence is possessed, occupied, under the control and charge of Silas Leonard Morgan

MY BELIEF OF THE AFORESAID STATEMENT IS BASED ON THE FOLLOWING FACTS: On February 25, 1971, Officers received information from a reliable source, whom affiant has received information from on four prior occasions and on each occasion the information has proven to be reliable. The source stated that Silas Leonard Morgan, also known as "Blackie" was selling Marihuana and had a quantity of Marihuana in a white mobile home, trimmed in green which Morgan had parked on his lot in Montgomery County.
Source stated that on February 25, 1971, Silas Leonard Morgan had taken source to the above described mobile home where source saw a large quantity of Marihuana. Source also stated that on March 4, 1971, source observed a large quantity of Marihuana and other drugs at the above described mobile home. Source also stated that Silas Leonard Morgan had said to source that he lived in Houston, Texas but always kept a large quantity of Marihuana and other drugs at the above described mobile home.
Officers of the Department of Public Safety, Narcotics Division have received information from other sources that Silas Leonard Morgan was a user and dealer of narcotics. Silas Leonard Morgan is presently on bond for possession of Marihuana. Officers of the Department of Public Safety, Narcotics Division, set up a surveillance on the above described mobile home in Montgomery County on February 25, 1971. On February 28, 1971 Officers observed Silas Leonard Morgan come to the above described mobile home at 11:10 A.M., driving a black over yellow Dodge Charger with Arkansas license number CCD 219. Officers observed Morgan remove a large brown plastic bag from the mobile home and place in the trunk of the black and yellow Dodge Charger, then leave and return to Houston, Texas. Source stated that Morgan stated that he had been to the County on February 28, 1971 and picked up a quantity of Marihuana.
Based on the above information, Officers have reason to believe and do believe that Silas Leonard Morgan has Marihuana in his possession for the purpose of use and sale contrary to the provision of the law.

Wherefore, I ask that a warrant to search for and seize the said narcotic drug and dangerous drug at the above described premises be issued in accordance with the law in such cases provided.

Charles Kelly

Sworn to and subscribed before me by Charles Kelly, on this the 4 day of March, A.D. 1971.

3/27/73
10, 860

MAGISTRATE

Justice of the Peace, Precinct No. ____, Place ____ County, Texas

Nar-38

SEARCH WARRANT

SEARCH WARRANT FOR Narcotic DRUGS

STATE OF TEXAS }
COUNTY OF Montgomery } To the Sheriff or Any Peace Officer of Montgomery County, Texas, GREETING:

Whereas, complaint in writing, under oath has been made before me by Charles Kelly, which complaint is hereto attached and expressly made a part hereof alleging that on or about the 4th day of March, A.D. 19 71, in the Montgomery County, Texas, one Silas Leonard Morgan did then and there unlawfully possess and does at this time unlawfully possess a narcotic drug and a dangerous drug, to-wit: Marihuana

and further that he has cause to believe and does believe that the said narcotic drug and dangerous drug are now concealed by Silas Leonard Morgan in a mobile home residence being described as a white mobile home trimmed in green situated in Montgomery County, Texas, located 175 feet South of Farm Road 1314, 5 and 1/10 miles West of US Highway #59 in the Lakewood Colony Estates, which said Silas Leonard Morgan now possesses, occupies, controls and has charge of.

And after examining the said complaint in writing and under oath, I have determined that the said complaint does state facts and information sufficient to establish probable cause for the issuance of this warrant to search for and seize the said narcotic drug and dangerous drug in accordance with the law in such cases provided.

YOU ARE THEREFORE COMMANDED TO FORTHWITH SEARCH THE PLACE ABOVE NAMED AND DESCRIBED WHERE THE SAID NARCOTIC DRUG AND DANGEROUS DRUG, TO-WIT: Marihuana are alleged to be concealed, and if you find such narcotic drug and dangerous drug, or any portion thereof, you will seize the same and bring it before me at my office, situated at Montgomery County, Texas, on the ____ day of Instanter, A.D. 19 71.

AND, you are commanded to arrest and bring before me, at said place and time, the said: Silas Leonard Morgan accused of the possession of the said narcotic drug and dangerous drug.

HEREIN FAIL NOT, AND DUE RETURN MAKE HEREOF TO ME AT THE TIME AND PLACE ABOVE NAMED.

Witness my signature on this the 4th day of March, A.D. 19 71; at 1130 o'clock A M.

MAGISTRATE

Justice of the Peace, Precinct No. ____, Place ____ County, Texas

3/2/71
10,86

Mar-25

OFFICER'S RETURN

Came to hand the 4 day of March, A. D. 19 71, at 730 o'clock P M.

and executed the 5 day of March, A. D. 19 71, at 9:15 o'clock P M.

by arresting Silas Leonard Morgan and confiscating
AB, one pound package's of green plant substance,
alleged Marijuana, and 3,401 tabs and caps found
in yard, 2 small plastic bags of green plant substance
1 clear plastic bag containing white power
substance, brown bottle labled "Butyn"
Sulfate 2%, Pink plastic tube containing
green plant substance found in trailer

[signature]

File No. _____

IN JUSTICE'S COURT

Precinct No. _____,

of _____ County.

THE STATE OF TEXAS

vs.

SEARCH WARRANT

Issued the _____ day of _____,

A. D. 19____.

_____ Justice of the Peace,

Precinct No. _____

_____ County, Texas.

FILED
MAY 29 1973
D.A. CLERK
By _____ Deputy

File No. _____

IN JUSTICE'S COURT
Precinct No. _____
of _____ County.

AFFIDAVIT
FOR
SEARCH WARRANT

Issued the _____ day of _____,
A. D. 19____.

_____ Justice of the Peace,
Precinct No. _____
_____ County, Texas.

FILED
MAR 29 1979
A. J. GRAY
District Clerk, Hardeman County, Texas
BY _____ DEPUTY